

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

SECOND APPEAL NO.591 OF 2007
WITH
CIVIL APPLICATION NO.1084 OF 2007

Mazid Suleman Kotawadkar & Ors. .. Appellants.
Vs.
Jamiruddin (alias) Kasam
Husain Kotawadkar & Ors. .. Respondents.

Mr.R.A.Thorat for Mr.Rajendra C.Dhuru for the
appellants.
Mr.Rakesh Bhatkar for respondent no.1.

**CORAM : D.B.BHOSALE, J.
DATED : 5TH SEPTEMBER, 2007.**

P.C.:

. Heard learned counsel for the parties.

2. This appeal is filed against concurrent findings of facts recorded by the courts below by which a suit filed by the plaintiff for partition and separate possession stands decreed.

3. Mr.Thorat, learned counsel for the appellants assailed the judgment on two grounds. Firstly, he submitted that the courts below were wrong in discarding the evidence of the defendants mainly on the ground that defendant nos.1(i) to 1(v) while adopting the written statement filed by defendant no.1 it was not verified as contemplated under Order

6 Rule 1. He invited my attention to the purshis filed by the advocate by which the written statement filed by defendant no.1 was adopted by defendant nos.4(i) to 4(v) and submitted that the said purshis was endorsed by the learned Judge and that amounts to verification of the written statement. I am unable to accept this submission since the law is now well settled that adopting the written statement of others without verification is not a written statement in the eye of law under Order 6 Rule 1 read with Order 8 Rule 2 of the Code of Civil Procedure. Similar view has been taken in **Babulal Agrawal Vs. Smt.Jyoti Shrivastava and Others AIR 2000 Madhya Pradesh 83** relied upon by the respondents. Upon perusal of the purshis by no stretch of imagination it could be said that defendant no.4(i) to 4(v) verified the written statement and its adoption is valid as contemplated by the law.

4. Secondly, Mr.Thorat submitted that the counter claim made by the defendants was not considered by both the courts below and without assigning any reasons have dismissed the same. It may be noticed that the suit was filed for partition in which the defendants filed counter claim, claiming possession of the suit house described in plaint paragraph no.1B. The plaintiffs in the suit have

claimed share in the suit property including the said house property. The courts below have held that the plaintiffs have share in the house property described in plaint para no.1B. Having held that the plaintiffs are entitled for one half share described in plaint para 1B, the counter claim could not have been allowed atleast to the extent of one half share in the suit house. In my opinion, substantial justice has been done by decreeing the suit and allotting the shares to all parties in the suit. The findings recorded by the courts below are entirely based on evidence on record and hence no interference is called for. No substantial question of law is raised. The second appeal is dismissed. Consequently, the civil application is also dismissed.

(D.B.BHOSALE, J.)